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Supreme Court, U.S.
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No. 95-1938

In The

Supreme Court of the United States

October Term, 1995

ALLEN A. IZADPANAH, *et al.*,

Petitioners,

vs.

EDWARD GROSS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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29 pp

QUESTIONS PRESENTED

1. Whether the courts below properly ruled that the federal district courts have no jurisdiction to overturn prior state court decisions that have already been unsuccessfully appealed through the United States Supreme Court.

2. Whether the courts below properly ruled that state court rulings are entitled to full faith and credit in the federal district courts, and therefore cannot be ignored nor set aside for the benefit of a disgruntled state court litigant attempting to retry his case in federal district court.

3. Whether the courts below properly ruled that the doctrines of claim and issue preclusion bar relitigation in federal district court of issues already tried and decided in prior state court proceedings.

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STATEMENT OF THE CASE

The Petitioner's case rests entirely upon his unsupported *factual* claim that somehow, without ever paying a penny, his confessed judgment debt was mysteriously "paid in full." The United States District Court for the Eastern District of Virginia (hereafter referred to as the "trial court") found no merit in this tale, summarily dismissing the case, and in so doing holding that this case was "improperly before the court," finding that:

> The question of whether the debt has been paid has been fully and finally litigated before [Virginia State Circuit Court] Judge Bach *who found the debt still owing.*

Appendix To The Petition For Writ of Certiorari, p. 7 (hereafter cited as "App. p.__") (emphasis added).

This trial court decision was based upon undisputed evidence that the Petitioner has already litigated his case fully in the Virginia state courts. There he previously, unsuccessfully argued the precise issues resurrected in his current case, ultimately petitioning this Court for a Writ of Certiorari. *Benzinger v. Sirex, USA, Inc.*, No. 93-1870 (U.S. 1993 Term). When his 1993 Petition for a Writ was denied, the Petitioner's case was fully, finally litigated. But this elementary tenet of law proved no deterrent, for the Petitioner simply refiled his case in the United States District Court seeking a different outcome from the federal judiciary.

Given the state court history, the Respondents moved for summary dismissal of this federal case on various theories including lack of jurisdiction, failure to state a claim, *res judicata*, and collateral estoppel. Additionally, Respondents established from simple citation to the law that the Petitioner's

claims were barred by applicable statutes of limitations. Crediting each of the Respondents' arguments, the trial court summarily dismissed the case, and this dismissal was upheld when challenged before the Fourth Circuit Court of Appeals.

REASONS FOR DENYING THE WRIT

I.

INTRODUCTION

Mirroring his previous pleadings, the Petitioner's petition to this Court offers a tale of fraud, treachery and deceit which takes the unorthodox form of a narrative. The Petitioner's *Statement of Case* (pp. 1-8) sets the foundation for his claims but does not contain one single citation to evidence in the record; rather, the narrative cites to the Petitioner's prior *allegations.* Moreover, nowhere does the Petitioner acknowledge the heavy burden he must bear when seeking to overturn the factual determinations of the trial court, and nowhere is there any argument or authority offered to support a conclusion that the trial court has abused its discretion.

The Petitioner's appeal seems founded on the supposition that fraud allegations supported by a speculative narrative suffice to establish *material* issues of contested fact which can withstand summary dismissal, and which must be afforded a hearing. To the contrary, a case based upon speculation and assumption not only fails to merit a hearing, it fails to pass muster under the prefiling investigation requirements of Federal Rule of Civil Procedure 11. The skepticism with which the Petitioner's case was viewed by the Fourth Circuit Court of Appeals is plainly evidenced in their opinion, which partially remanded the case solely for further consideration of sanctions against the Petitioner's attorneys. (App. p. 5). On remand, the trial court in fact did levy sanctions against all counsel for Petitioner for fees in the amount of $61,828.25, and expenses in the amount of

$5,040.52. *See* Order and Memorandum Opinion attached hereto as Appendix A.

II.

NO COMPELLING REASON TO GRANT CERTIORARI UNDER RULE 10

Rule 10 of the Rules of the Supreme Court states that a Petition for Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. However, such alleged errors are the only type asserted by Petitioners. Petitioners's first question presented is "Whether the courts below misconstrued the facts of the case." The remaining questions presented either restate the first or contend a misapplication to a properly stated rule of law.

Petitioners do not assert any compelling reason as to why the United States Supreme Court should grant Petitioner's Petition for a Writ of Certiorari. The Petitioner does not contend that the Fourth Circuit Court of Appeals entered a decision which conflicts with the decision of another United States Court of Appeals or is in conflict with a decision by a state court of last resort. Moreover, the Petitioner has failed to put before this Court any important federal question that conflicts with decisions made by this Court. Applying the considerations governing review of certiorari set forth in Rule 10 of the Rules of the Supreme Court, Petitioner's Petition for a Writ of Certiorari does not warrant this Court's review.

III.

LACK OF JURISDICTION

The primary objective of the *Complaint* (and the proposed *Amended Complaint*) was reargument of factual and legal

determinations of Virginia's state courts.[1] To escape the conclusive effect of those final state court determinations, the Petitioner shifted venue to the federal courts and attempted to turn a routine evidentiary dispute — whether his confessed judgement debt was ever paid — into a cause of action for fraud. He asked the federal courts to relitigate the debt question, overturn state court rulings holding that the debt was unpaid, and thereafter hold that fraud had been committed upon the Virginia courts. If allowed to proceed in this manner, the Petitioner reasoned, then the trial court would have the power to set aside Virginia state court findings and orders.

Recognizing the Petitioner's improper motivation, the trial court refused to hear this case, stating:

> Plaintiff claims a violation of his Constitutional right of due process and seeks to have this Court overturn the 1991 Consent judgement entered by the Fairfax Circuit Court. This Court lacks jurisdiction to overturn State court decisions.
>
> . . .

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1. The Petitioner's petition makes much of the fact that the trial court did not issue a separate written opinion detailing the reasons for denying his motion for leave to file an Amended Complaint. This issue is a "red herring." The Amended Complaint is simply a factual rehash of the Complaint, with several new legal theories, all of which require reversal of prior state court decisions. This point was fully briefed to the trial court, which would not allow the Petitioner to use the artifice of "amending" his Complaint to defeat summary judgement. The Petitioner argued his case fully in his *Motion To Alter or Amend Judgement*, but the trial court rejected the argument. (App. pp. 14-15).

> Plaintiff asks this Court to review the factual findings to determine if fraud has been committed on a [sic] the Fairfax Circuit Court . . . The proper forum for determining whether a factual finding should be overturned is the court in which the determination took place, the Fairfax Circuit Court.

App. pp. 8-9 (citations omitted).

This decision was upheld by the United States Fourth Circuit Court of Appeals, which had previously held in *Rock v. United States*, 912 F.2d 463 (4th Cir. 1990):

> Federal courts have no jurisdiction over challenges to state court decisions, and in particular, over cases arising out of judicial proceedings, even if the state court action is alleged to be unconstitutional.

Id. (emphasis added).

The *Rock* case followed this Court's precedent set in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L. Ed. 2d 206 (1983), which held that the federal district courts lack subject matter jurisdiction to review final determinations of state courts; noting, however, that such review is available in the United States Supreme Court. [2]

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2. As noted above, the Petitioner did in fact avail himself of a United States Supreme Court appeal in 1992 after unsuccessfully pursuing his state court remedies through the Virginia Supreme Court, but this Court denied the previous Petition for a Writ of Certiorari.

In *Feldman,* citing *Dasher v. Supreme Court of Texas,* 658 F.2d 1045 (5th Cir. 1981), Justice Brennan wrote:

> If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding ..., then the district court is in essence being called upon to review the state-court decision. This the district court may not do.

District of Columbia Court of Appeals v. Feldman, supra, 460 U.S. at p. 1315.

Explaining an important corollary to this point, *Clark v. Clark,* 984 F.2d 272 (8th Cir. 1983), emphasizes that federal courts are not a forum for relitigating adverse state decisions. Moreover, the *Clark* case rejects the Petitioner's repeated attempts to equate lack of a written opinion denying his fraud claims with a denial of adjudication, explaining that:

> Plaintiff may not relitigate the issues that have thus been determined against her. . . . Courts frequently reject by implication arguments urged by parties. . . . The state courts' opinions' failure to mention plaintiff's federal constitutional arguments means only that those courts did not consider the arguments substantial. The doctrines of claim and issue preclusion prevent relitigation of wrong decisions just as much as right ones.

Id. at 273.

As the trial court noted (App. pp. 8-9), *Cleveland Demolition v. Azcon Scrap*, 827 F.2d 984 (4th Cir. 1987), rejects the notion that a losing party — such as the Petitioner in this case — can retry an unfavorable evidentiary determination through the artifice of filing an independent fraud action:

> If a routine evidentiary dispute, which occurs in virtually all trials, could justify an action for fraud on the court, then any losing party could bring an independent action to set aside the verdict, forcing extended proceedings in almost every case . . . Thus, . . . no verdict would ever be final until a second proceeding was held to determine if there was a fraud on the court ... [E]videntiary conflicts must be resolved during the initial trial.

Id. at p. 987.[3]

If allowed to proceed here the Petitioner would effectively be receiving another opportunity to litigate matters fully and finally litigated when this Court denied his first Petition for a Writ of a Certiorari in 1992. The lower federal courts rejected this attempt. Those rulings are grounded in long established precedent and should not be overturned.

---

3. The Complaint in *Cleveland Demolition* alleged fraud against the opposing parties *and* their attorney. Rule 11 sanctions were imposed for this tactic, in part because of the "potentially devastating impact upon professional reputations" which speculative fraud allegations against the attorney carried with them. The *Complaint* in this case likewise leveled speculative fraud allegations against opposing counsel, naming counsel as a party defendant. Rule 11 sanctions against Petitioner's counsel were initially denied, but upon remand from the Fourth Circuit Court of Appeals, the trial court levied sanctions against all counsel for Petitioners for fees in the amount of $61,828.25, and expenses in the amount of $5,040.52.

IV.

FEDERAL AND STATE SECURITIES LAW CLAIMS (THERE IS NO INJUNCTION TOLLING THE STATUTE OF LIMITATIONS).

Throughout his petition, and particularly with respect to the securities law claims (*e.g.*, App. pp. 18-20), the Petitioner suggests that a *state court* injunction somehow prevented him from filing his federal action, thereby tolling the applicable statutes of limitations. In his novel construction of the facts and law, the Petitioner fails to address these important specifics which were fully briefed to the United States District Court: (1) the cited injunction, by its very terms, has no application whatsoever to a personal action by the Petitioner, such as this one (App. p. 18-19); and (2) in early *1993* Petitioner's counsel clarified with the state court that the state court injunctions would not preclude a federal action. (App. p. 23).

Even a cursory review of the cited injunction makes clear that the Petitioner is only enjoined from: (1) pursuing three identified state court cases, or (2) acting *on behalf of,* or pursuing claims *in the name of,* Aidant, Inc. (App. pp. 18-19). The Petitioner in this case is neither pursuing any of the three specified state court actions, nor is he acting on behalf, or in the name, of Aidant, Inc.; rather, in this latest case he is suing in his individual capacity. Therefore, even assuming for the purposes of argument that this state court injunction could stop him from filing a federal suit covered by its limited terms, it has no application whatsoever to *this* suit because this suit falls outside the scope of the injunction. Elementary legal reasoning dispels the unsupported tolling argument, and the trial court was therefore entirely correct in disregarding it and finding that the statutes of limitations applicable to Petitioner's claims ran unabated.

A. Failure To State A Claim Under 15 U.S.C. § 78 (Rule 10b-5)

Throughout the *Complaint,* specifically in Count II, the Petitioner claims that Respondents violated the Securities and Exchange Act of 1934. Petitioner seeks to find Respondents liable under 15 U.S.C. § 78, Rule 10b-5 (hereinafter "Rule 10b-5"). The trial court dismissed these claims because they are barred by the statute of limitations, because the Petitioner lacks standing to assert a claim, and because Petitioner fails to set forth circumstances for which Rule 10b-5 was intended to provide civil relief. (App. pp. 10-11).

1. *Statute of Limitations*

The statute of limitations for a Rule 10b-5 violation requires "the action to 'be commenced within one year after the discovery of the facts constituting the violation *and* within three years after such violation.' " *Howard v. Haddad,* 962 F.2d 328, 330 (4th Cir. 1992) (emphasis added). The Petitioner's claim fails under *both* requirements.

The *Complaint* itself establishes that the alleged fraud occurred over three years ago, because it alleges that the actions constituting a violation of Rule 10b-5 occurred between December 1990 and May 3, 1991, when Respondents allegedly concluded their fraudulent scheme to induce the Petitioner to agree to the *Consent Order* for a debt they knew to be satisfied. (App. p. 6). Petitioner filed the present lawsuit on August 29, 1994, more than three years after he agreed to the May 3, 1991 *Consent Order.* Given the specific allegations of the *Complaint* itself, there is no credible argument that the trial court abused its discretion when finding that the alleged fraudulent acts occurred more than three years before its filing. (App. p. 10).

The Petitioner now offers semantic gymnastics, attempting to refute his own allegations in the *Complaint* by arguing that the "pattern of fraudulent conduct" persisted until August 29, 1991, and therefore his claim is timely. But the Respondents took no action on that date. August 29, 1991 is the date on which the Virginia state *court* issued the *Stock Turnover Order,* which is discussed in the trial court's opinion at App. p. 7. Neither the Commonwealth of Virginia nor any of its agents are named as defendants in this case. Therefore, Petitioner's attempt to transform the state court's August 29, 1991 action —enforcing a confessed judgement — into a pattern of fraudulent conduct which tolled the statute of limitations is neither credible nor consistent with his own *Complaint.*

Moreover, the Petitioner's claim was not brought within one year after discovering the alleged fraud. The *Complaint* itself alleges that: "In September 1992 Petitioner first learned of parts of the subterfuge and artifices by which he had 'lost his stock'." This admission places his case outside the one year limitation. Further, the trial court made a specific factual determination that the Plaintiff knew the facts giving rise to his fraud claims in 1991. (App. p. 7). This finding is based in part upon the Petitioner's **1991** state court pleading admissions, where he alleged that:

> Certainly, any activity involving trust funds of Aidant, Inc. and dealings in the stock of Aidant, Inc. and held by Messrs. Crowe, Hummel, et al., and held for their own personal benefit with Sirex, does nothing but compound the complexity of the *fraud* charged . . .

(Emphasis added). The trial court properly held, therefore, that the Petitioner failed to commence his action within one year of his discovery of the alleged violation, or three years of the events

giving rise to the alleged violation, and his Rule 10b-5 allegations are barred by the statute of limitations. *Id.*

2. *Lack of Standing*

Rule 10b-5 was established to protect investors from market manipulation, not as a means to challenge state court debt collection procedures. Petitioner's action is in truth a challenge to the findings and orders of the Virginia judiciary (and by extension to the ruling of this Court denying a Writ in 1992). Rule 10b-5 was not promulgated to permit a civil cause of action under these circumstances.

The Petitioner seeks to establish standing by invoking the so-called "Birnbaum Rule" which confers standing on individuals, in limited circumstances, to assert a private cause of action under Rule 10b-5. *See Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2nd Cir. 1952), *cert. denied*, 343 U.S. 956 (1952). The "Birnbaum Rule" limits standing to a defrauded purchaser or seller of securities.

The Petitioner makes no claim to be a purchaser, rather, he claims to be a defrauded "seller" of his stock. But as the trial court held, Petitioner was not a seller of securities, nor even a participant in the sale of stock: "He lost ownership of the stock pursuant to the Stock Turnover Order entered by the Fairfax Court." (App. p. 10).

Further, the Petitioner's attempt to classify himself as a "Forced Seller" of stock finds no support. The "Forced Seller" concept applies in cases resulting from merger and to shareholders fraudulently forced to sell their stock. *See, e.g., Mosher v. Kane*, 784 F.2d 1385 (9th Cir. 1986). Here there is no merger, and the Petitioner is not a seller for he did not even participate in the stock sale. The glaring, undisputable fact which

the Petitioner has consistently ignored, but which every court has recognized, is that the Petitioner had absolute control over his stock — if he simply paid his legitimate debts he would have his stock today. He *chose* not to pay. Hence, "Plaintiff has not established that he was a forced seller under the Birnbaum Rule and therefore lacks standing for a private cause of action." App. p. 11.

B. Failure To State A Claim Under 42 U.S.C. §§ 1983 And 1985

Without ever explaining precisely how, the *Complaint* concludes that the Respondents have violated two federal civil rights statutes: 42 U.S.C. § 1983 and § 1985. The trial court held that these claims fail to state a cause of action because the claims are barred by the statute of limitations, and the Respondents are not proper defendants.

1. *Statute of Limitations*

The *Complaint* alleges that the Petitioner's loss of stock represents a deprivation of property without due process of law in violation of §§ 1983 and 1985, with the culminating event being the Virginia state court's *Stock Turnover Order* of August 29, *1991*.

The trial court's holding that these claims are barred by the statutes of limitations cannot be seriously disputed. (App. p. 11). Even if this Court credits the Petitioner's argument that the statutes did not begin to run until he knew of the allegedly fraudulent acts, the trial court has made a specific factual determination that he knew of his loss of stock by November 1991 when he moved to vacate the *Stock Turnover Order*, as fully discussed *supra*, and this finding is unequivocally supported by the Petitioner's own admissions. Because the Petitioner failed to

commence his action within two years of that date, his civil rights claims are barred by the statute of limitations, for as the trial court wrote:

> The United States Supreme Court has held that claims under § 1983 are best characterized as personal injury claims for limitation purposes. *Wilson v. Garcia*, 471 U.S. 261, 276-78 (1985). The appropriate state statute of limitation controls for claims under § 1985 as well . . . In Virginia, the statute of limitations for these actions is *two* years. . . .

App. p. 11 (emphasis added).

2. *Failure to State a Claim*

The civil rights statutes cited by the Petitioner were simply not designed to provide a mechanism to collaterally attack a state court's judgement enforcement proceedings. Petitioner cites no authority, and alleges no specific facts, to support a violation by these Respondents. Because his attack is in actuality levelled against the Virginia judiciary which entered the *Stock Turnover Order* — and which refused each of his many challenges to that order — to present even a colorable claim the Petitioner would have had to allege some improper state action to support his civil rights claims, but he has alleged no improper state action and has named neither the State nor its agents as parties. The trial court therefore properly ruled that:

> 42 U.S.C. §§ 1983 and 1985 were enacted to prevent people from conspiring to interfere with certain individual rights. The undisputed evidence demonstrates nothing more than defendants executing on a valid

> final judgement pursuant to constitutional state law procedures. Such lawful pursuit does not state a § 1983 or § 1985 claim.

App. p. 11.

C. Failure To State A Claim For State Law Fraud Claims

The Virginia state courts found that the Petitioner's underlying judgement debt was never paid, and the United States District Court properly gave full faith and credit to this decision. Because each of the *Complaint's* state law fraud and abuse of process claims depend upon the erroneous factual premise that the debt was paid, they were properly dismissed. (App. pp. 12-14).

V.

SUMMARY JUDGMENT

Res Judicata/Collateral Estoppel

After concluding that this case should be dismissed for two separate and distinct reasons — the court lacked jurisdiction, and the *Complaint* failed to state a claim in any event — the trial court went on to grant summary judgement and dismiss the *Complaint* for a third distinct reason: the matters set forth for adjudication have already been tried and decided. As the trial court wrote:

> Under the principles of res judicata and collateral estoppel parties are precluded from "relitigating issues that were or could have been dealt with in an earlier litigation." *Betances v. Quiros*, 603 F. Supp. 201, 205 (D. Puerto Rico 1985), quoting *Angel v. Bullington*, 330 U.S. 183 (1947). The Full

> Faith and Credit principle provides that State court decisions have the same preclusive effect in Federal courts as in State courts. *Bennun v. Board of Governors of Rutgers,* 413 F. Supp. 1274, 1278 (D. N.J. 1976). The Virginia courts have ruled on these issues and ". . . [s]ection 1983 does not authorize a litigant to relitigate in a federal forum an issue already determined by a state court." *Concordia v. Bendekovic,* 693 F.2d 1073, 1077 (11th Cir. 1982) Additionally, if the claim is one that should have been resolved in a previous lawsuit, it will be precluded. *Keith v. Aldridge,* 900 F.2d 736, 740 (4th Cir. 1990).

App. pp. 12-13.

In light of this precedent, the trial court held each of the Petitioner's substantive claims barred by the doctrines of *res judicata* and/or collateral estoppel. First the court held:

> Plaintiff's claim of lack of jurisdiction of the court over his stock has been litigated in the Fairfax Circuit Court, denied appeal by the Virginia Supreme Court, and denied Writ of Certiorari by the United States Supreme Court. This question has been fully litigated and cannot be reopened now.

App. p. 13.

This holding was amply supported by the record, which established that in November, 1991 the Petitioner moved to vacate the *Stock Turnover Order,* arguing to the Virginia state court that it had no jurisdiction over his stock. In his 1991 motion the Petitioner argued:

> The Order of Attachment entered by the Circuit Court against Izadpanah's Aidant Stock, on August 29, 1991, is Void for Want of Jurisdiction Over the Res Attached.

This precise issue was presented to this Court in the Petitioner's unsuccessful 1993 Petition for a Writ of Certiorari. This Court implicitly rejected the claim when denying the 1993 Writ. The matter has been fully litigated, and the trial court properly granted summary judgment.

Next the trial court held that:

> Plaintiff has already litigated the issue of improper service. His motion to vacate was denied as was his appeal to the Virginia Supreme Court. The same arguments were made and rejected when the U.S. Supreme Court denied his Writ of Certiorari.

App. p. 13.

In his 1991 motion, Petitioner made this notice argument:

> No service upon Izadpanah was ever effected notifying him that a hearing would be held relating to the attachment of his Aidant stock.

Again, the state courts rejected the argument, as did this Court. Nevertheless, this decided matter reappeared in the present *Complaint,* and the trial court properly granted summary judgment.

Next the court held that the Petitioner's fraud claims had been previously litigated and were therefore barred, saying:

> . . . plaintiff argued that the defendants had committed various frauds in connection with the Virginia judicial system, i.e., that his attorneys were fraudulently induced into signing the Consent Judgement, that the court was fraudulently employed to strip the plaintiff of his stock, that Mr. Gross misrepresented his client's identity and the fact that the debt was due and owing.

App. p. 13.

As noted in the Statement of the Case, the Petitioner had his day in court on these issues. But the state court disagreed, and the Petitioner's appeals on these issues through and including this Court were rejected, yet the present Complaint resurrects these precise arguments. The trial court was entirely correct in ruling that these claims have been "fully and finally decided." *Id.*

Finally, the trial court reviewed the Petitioner's prior state court pleadings (which were offered as evidence in support of summary dismissal), then held that:

> The same claim in plaintiff's present Complaint, that defendants violated state and federal securities laws, has been rejected by the Fairfax Circuit Court, and appeals denied by the Virginia Supreme Court and the U.S. Supreme Court. Thus, the question of any violation of federal or state securities laws has already been decided.

(App. pp. 13-14). This holding, having been based upon review of the Petitioner's own pleadings, is undisputable. Indeed, even a cursory review of the Petitioner's prior Petition for a Writ from

this Court reveals that these issues were fully litigated. As the trial court ruled, this argument was pursued and denied through this Court; therefore, "the question of any violation of Federal and State securities laws has already been decided," and furthermore:

> Plaintiff is precluded from bringing any action based on violation of federal or state securities laws whether he was aware of them at the time of the original filing or not. It is the existence of the claim not the awareness of it that controls. *Keith*, 900 F.2d 740. The plaintiff raised this very claim at trial and lost. The decision was unsuccessfully appealed to the Virginia and United States Supreme Courts.

App. p. 14.

The Petitioner challenges the trial court's reliance on *Keith*, suggesting that this precedent does not apply because the facts giving rise to his claim were intentionally withheld from him. But the trial court made a specific factual finding that the Petitioner knew of these facts by November 1991, and this finding is supported by the Petitioner's own 1991 pleading admissions as fully discussed *supra*. Therefore, there can be no legitimate dispute on this point. The simple fact is that the Petitioner has filed a case in federal court seeking to relitigate adverse state court decisions. The trial court, when given evidence of the prior proceedings, granted summary dismissal for several separate and distinct reasons. This summary dismissal was upheld on appeal (the case being partially remanded *solely* to determine whether sanctions should be imposed on Petitioner's counsel for filing this case in the first place).

CONCLUSION

The Petitioner has previously fully litigated every issue raised in his petition. He is precluded from relitigating those same issues in this Court or any other. Even if the Petitioner's semantic tinkering can be viewed as creating "new" claims, these claims are nevertheless barred both because they require reversal of state court decisions previously upheld through and including appeal to this Court, and because they arise out of exactly the same transactions or occurrences and therefore could have been previously raised. It is time to lay this matter to rest once and for all. Therefore, Respondents respectfully request that the Petition for a Writ of Certiorari be denied, and that the Respondents be awarded their costs.

Respectfully submitted,

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APPENDIX A — ORDER AND MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA DATED JUNE 19, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

CIVIL ACTION NO. 94-1150-A

ALLEN A. IZADPANAH,

Plaintiff,

EDWARD GROSS, *et al.*,

Defendants.

ORDER

In accordance with the accompanying Memorandum Opinion, the defendants are entitled to recover fees in the amount of $61,828.25, and expenses of $5040.52, from William S. Burroughs, Jr., Walter T. Charlton, and Joel A. Deboe.

s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
June 19, 1996

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CIVIL ACTION NO. 94-1150-A

ALLEN A. IZADPANAH,

Plaintiff,

EDWARD GROSS, *et al.*,

Defendants.

MEMORANDUM OPINION

This case is before the Court on remand from the United States Court of Appeals for the Fourth Circuit for reconsideration of sanctions.

The plaintiff brought this suit against the defendants seeking to overturn a court ordered sale of his stock in Aidant and to recover damages for an alleged fraud on a state court, violations of civil rights under 42 U.S.C § 1983, violations of § 10(b) of the Securities Exchange Act of 1934, and violations of the Virginia securities laws.

In May 1991, as a result of negotiations to settle an outstanding judgment against him as a guarantor of debt owed by Aidant, Izadpanah entered into a consent judgment in favor of Sirex USA, Incorporated (Sirex). Crowe and Hummel were shareholders in Aidant and on its board of directors. Izadpanah

was an officer and director of Aidant. After several unsuccessful collection attempts, Sirex executed documents transferring its rights in the judgment to FCC in July 1991. FCC filed a Motion to Turnover Property with the Fairfax County Circuit Court in August 1991, and the court ordered the sale of Izadpanah's stock in Aidant with the proceeds to be applied to the consent judgment. Izadpanah subsequently filed a motion to vacate the sale, arguing that the state court did not have jurisdiction over the stock. The state court rejected Izadpanah's argument, and the Supreme Court of Virginia affirmed.

Izadpanah then filed this action asserting a conspiracy between Crowe, Hummel, and Gross, acting both individually and through Aidant and FCC, to deprive him of his stock in Aidant and to gain complete control of that company. He alleged that, as part of this conspiracy, defendants committed a fraud on the state court by inducing him to enter into the consent judgment without disclosing that FCC had actually purchased the rights to the judgment from Sirex prior to May 1991. He also argued that defendants conspired to deprive him of his stock without due process of law and that the court-ordered sale of his stock in Aidant violated federal and state securities laws. This court granted summary judgment against Izadpanah on the grounds that it did not have jurisdiction to review decisions by state courts; that Izadpanah's civil rights and securities claims were barred by the applicable statutes of limitation; and further, that all of the claims were precluded by Virginia principles of res judicata and collateral estoppel applied under the full faith and credit statute, 28 U.S.C.A. § 1738 (West 1994). This court denied the defendant's motion for sanctions against Izadpanah considering his argument that the alleged securities fraud gave jurisdiction in this case and distinguished his facts from a review of the decision of the Circuit Court of Fairfax County, Virginia.

Appendix A

In his initial brief on appeal, the plaintiff argued that this court had jurisdiction. However, he withdrew this claim in his reply brief conceding that his claim was a review of a state court decision, and that he had failed to properly consider *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), which precludes such review.

Rule 11 of the Federal Rules of Civil Procedure requires an attorney to conduct a reasonable investigation of the factual and legal basis of his claim before filing. *Brubaker v. City of Richmond*, 943 F.2d 1363, (4th cir. 1991).

By filing this complaint, counsel represented to the court that the claims were warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law.

Counsel were on notice of the question of jurisdiction from the beginning of this action and continued to pursue their claims through motions to dismiss and motions for summary judgment in this court. They appealed the grant of summary judgment in this court and continued to pursue their position until the filing of a reply brief in the court of appeals where they concede the jurisdiction issue. Obviously, this case was not pursued for a non-frivolous argument for the extension, modification, or reversal of existing law. Had such an intent existed, counsel would have continued with their arguments before the court of appeals. Had this court had any evidence that counsel for the plaintiff was continuing this action only to concede they were not serious in making their legal challenge on their attempt to distinguish *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), sanctions would have been granted in the court's order of December 2, 1994.

Appendix A

The defendants have submitted statements for counsel fees of $61,828.25, and expenses of $5040.52 for representation in the district court and the court of appeals. The rates charged and the hours spent are reasonable for work done. Three lawyers are counsel of record in this case, and have appeared and argued and submitted briefs in both this court and the court of appeals. They are William S. Burroughs, Jr., Walter T. Charlton, and Joel A. DeBoe. Attorneys Charlton and DeBoe were in this case from the beginning. Attorney Burroughs was in the case from summary judgment through appeal. The defendants are entitled to sanctions against all counsel.

The rule in this circuit is that the least sanction to serve the purpose of Rule 11 should be imposed. In re: *Kunstler*, 914 F.2d 505 (4th cir. 1990) *cert denied* 111 S.Ct. 1607 (1991). The plaintiff and counsel were required to make a reasonable investigation of the legal basis for their claim. This should have been done prior to filing a complaint, or at least at the summary judgment argument, instead of in a reply brief before the court of appeals. The only proper sanction is the entire amount of defendants' fees and costs.

An appropriate Order shall issue.

s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
June 19, 1996